

## January 1999

Work-related musculoskeletal disorders (MSDs) are among the most common and costly occupational injuries and illnesses in the United States and in Washington State. Using a highly participatory process, the Washington Department of Labor and Industries is developing a proposed workplace rule to help prevent these disorders.

This update summarizes the following:

- The rule-development conferences that were held in October, 1998.
- Comments gathered at the conferences.
- Written comments received outside the conferences.
- Key issues drawn from all the comments, which will serve as a starting point for the work of an advisory committee.
- The next step in the rule development process - assembling an advisory committee.

## Rule Development Conferences Well Attended

The Department of Labor and Industries held nine rule-development conferences in October 1998 to listen to public opinion on work-related musculoskeletal disorders (MSDs) and their prevention. The conferences were designed to help identify issues, concerns and options that needed to be considered before L&I develops a proposed workplace rule on MSD prevention. Seven of these conferences were public conferences held in different cities and two others were held in conjunction with the Governor's Industrial Safety and Health Conference.

### Overview of Attendance

Group	Total # of Attendees	Group	Total # of Attendees
Small Business (up to 50 employees)	38	Safety & Health/Ergonomics Consultants	8
Med. Business (51-100 employees)	25	Health Care Community	28
Large Business (over 100 employees)	174	University/College Staff, Researchers	9
Business Associations	101	Government, State & Federal	28
Labor	64	Self, or Did Not Specify	39

## Rule Making on MSD Prevention

At each conference, the audience heard a brief overview of the MSD issue presented by Labor and Industries then broke into several smaller groups. Several questions provided by Labor and Industries were used to launch discussion.

Note takers recorded participants comments. The note takers attempted to capture the main point of comments offered, not record comments verbatim. In some cases, other L&I staff who took notes in a breakout session clarified or added to the notes. The commentator's name was not recorded for each comment they made in a session, although those participating in each breakout session were encouraged to sign a roster. Five questions were used in most sessions to help focus comments on the proposed rule. For the sessions in Tacoma, Spokane, and during the Governor's Safety and Health Conference, six questions were used. The Department stated in an opening presentation that a decision had been made to move forward on developing a proposed rule, so comments were given in this context. Comments offered don't necessarily imply that an individual supported a new rule.

### Useful Input Gathered at the Conferences

The following synopsis includes only the comments received at the conferences. This synopsis includes only those comments that were most frequently stated.

### Discussion Questions and Comments Received

1. The Department of Labor and Industries believes that the prevention of work related musculoskeletal disorders requires a comprehensive effort, including new rule-making as well as expanded education, training, consultation, technical assistance and research. What do you think would be the most effective combination of activities and programs? What are your ideas about how rule-making might work as part of this comprehensive effort?

Don't think a rule is necessary because:

- Already covered by existing regulations (e.g., Accident Prevention Program)
- OSHA is working on a regulation
- There's not enough data, good science to support a regulation
- MSDs are due to factors outside of work
- We have too many regulations already
- Injury rates are already going down
- A regulation would be too costly, would have to automate, lay people off

## Rule Making on MSD Prevention

Need a rule because:

- Workers are getting injured and need protection
- Some employers won't act without a regulation
- Enough evidence exists to support a rule
- A standard is long overdue and very much needed
- Need to make changes to worker's compensation system, educate health care providers to make sure that MSD claims are really caused by work before being accepted
- Would rather have more education, consultation instead of a rule
- Need education, consultation in addition to a rule
- Have financial incentives for employers
- Would rather have voluntary guidelines (e.g., industry specific best practices)
- Work with associations to publicize best practices
- Do cost-benefit analysis to show advantages of ergonomics
- Need to do more research to have definite thresholds for how much is too much & develop known solutions before enforcing

2. What measures have worked to reduce musculoskeletal disorders in your workplace?

- Training (employees, supervisors, safety personnel, train-the-trainer)
- Engineering controls (workstations, equipment, manual material handling aids, floor surfaces, process redesign, changes to materials)
- Employee involvement (employees ID problems, solutions, work with ergonomics teams, safety committees)
- Administrative controls (job rotation, policies, lifting limits, teamwork, job redesign, breaks)
- Worksite analysis (incident investigation, proactive assessment, employee surveys)
- Medical management (claims/case management, early reporting & intervention, light duty, return-to-work, pre-screening)
- Stretch and exercise programs
- Assigning/hiring staff (S&H, physical therapist, outside consultant, employee rep.)
- Comprehensive ergonomics program
- L&I consultation assistance

3. Have you faced difficulties implementing prevention measures? What are they?

- Claims due to factors outside of work (outside activities, genetics, aging workforce)

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- Employees' behavior causes claims (don't follow training)
- Costs too much to make changes (e.g., can't rotate between jobs)
- Management not supportive of making changes
- Unions, job descriptions limit changes
- Solutions must be customized to industry, job and individual; difficult and time consuming to accomplish
- Non-fixed work environments (construction, agriculture)
- Transient workforce (temporary or migrant workers, high turnover)
- Lack of science
- Psychosocial factors responsible for MSDs (management style, stress)
- Lack of cost-benefit analysis
- Materials, equipment provided by suppliers not ergonomic
- Implementing ergonomics for prevention is easy, harder to manage after injury takes place.

### 4. What requirements should a regulation to prevent MSDs contain?

- Training
- Employee involvement
- Shared accountability (employee responsibilities in addition to employer's)
- Recognition of factors outside of work
- Task, industry specific requirements
- Financial incentives for employers
- Medical management, health care provider involvement (train HCPs in assessing work-relatedness, involve HCP in workplace analysis)
- Employers, industry groups determine goals, changes that will work, develop own process (Dept. of Ecology's Pollution Prevention regulation as a model)
- Education before enforcement
- Worksite analysis
- Engineering controls
- Clearly defined risk factors & injury definitions, based on good science
- Require only "ergonomically certified" equipment
- Provide employers a "safe harbor", no penalties for trying changes or encouraging early reporting, limit their liability
- Short, simple, clearly interpreted
- Target bad actors, employers with the most injuries
- Job rotation

### 5. How can a rule be flexible enough to meet the needs and challenges of many industries and workplaces with different types and levels of hazards?

- Educate employers regarding requirements, solutions
- Limit rule to gradual onset MSDs

## Rule Making on MSD Prevention

- Industry specific rules
- Job/task specific rules
- Injury/body part specific rules
- Exclude some industries
- Allow employers/industries to determine their own goals and methods for achieving them
- Require only generic program elements and leave the rest flexible (e.g., general rule for everyone with branches or flowchart guidelines for specific problems, potential solutions).
- Have a performance-based/goal-oriented rule
- Phase-in, implement incrementally, evaluate and retire rule if not effective
- Include cost-benefit analysis when developing, enforcing rule
- Don't require prevention of all injuries, recognize that some injuries will always occur, seek to minimize their number, impact
- Assess using anthropometric and biomechanical principles

### 6. What special issues may small businesses face?

- Lack of financial resources, no price breaks, economies of scale in small business
- Lack of staff, expertise in ergonomics
- Already high regulatory burden, another rule would drive some out of business
- Can get stuck with ineffective, expensive ergonomics equipment if employee leaves, too costly
- Lack of time to deal with ergonomics, paperwork, developing written programs
- Training costs are more of a burden in small business
- Employee turnover a problem

### 7. How should they be addressed?

- L&I should evaluate programs, solutions already in place and share success stories with businesses and associations
- Provide grants, low interest loans or other financial assistance
- If a small business has no history of MSDs, then don't require them to have a program
- L&I needs to provide more outreach, marketing of existing programs
- L&I needs to provide timely assistance and education
- Associations could provide assistance, education, mentoring in cooperation with L&I
- L&I should assist with cost-benefit analysis, help small business to recognize cost savings from improved productivity, efficiency and quality from ergonomics

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- Have small business review draft standard to make sure it is understandable, keep it simple
- Have different requirements and allow more time depending on employer size
- Keep paperwork requirements to a minimum
- Exclude small business, or don't fine them if inspected

### 8. Are there any issues you want to discuss that haven't been raised?

- How will this rule impact ADA issues?
- How will this rule impact third party liability when implementing ergonomics controls?
- Need L&I inspectors to be less subjective, more knowledgeable of industries they are inspecting.

## Input Continued Following the Conferences

As of December 23, 1998 the department had received 154 letters, faxes and e-mails related to MSD rule development. In addition, we have received 889 surveys from individual union rank and file members that are related to MSDs and rule making. Most of this correspondence was received subsequent to 9 rule development conferences.

### The correspondence breaks out as follows:

- 47 letters are from business, either owners, managers, or safety and health representatives; 18 of these specifically state that they are a small business.
- Seven letters came from business associations, which combined represent thousands of Washington employers, large and small.
- 94 letters came from labor, 58 of these from individual members, and 36 from labor organizations representing their membership, which combined represent thousands of Washington workers.
- Six letters came from other sources, including safety and health consultants, health care, and individuals representing themselves.
- 889 individual surveys from union workers that addressed 6 questions related to MSDs and rule making.

Of the 54 letters from business and business associations, 32 specifically state that they oppose a regulation in this area. The most frequent reasons given for opposing a regulation include a lack of science to support a standard, difficulties inherent in developing a single standard to cover all industries and job types, and the already high regulatory burden with which business must currently contend. Among these letters is one from the National Federation of Independent Business (NFIB) stating that a poll of their

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nationwide membership revealed that 79% of them opposed a regulation addressing repetitive motion.

The remaining letters from the business community varied in tone, ranging from opposing a regulation unless certain criteria are first met, to suggesting elements that a regulation should contain without directly expressing support for a standard. Comments offered in the letters were similar to those recorded at the public conferences, and in some cases the letters were from attendees who were reiterating and expanding on points that they had made at one or more of the conferences.

The 94 letters from the labor community were unanimous in their support of a standard. Several letters offered personal experiences from workers who had suffered MSDs or who worked alongside others who had suffered an injury.

The survey of the rank and file union members asked the following questions:

- Have you or any of your co-workers experienced carpal tunnel syndrome, tendinitis, back injury, etc. related to your work?
- Do you think these "musculoskeletal disorders" (MSDs) are a big problem in your workplace?
- Do you think your workplace needs to be improved to prevent these problems?
- What are the main things causing MSDs in your workplace?
- Do you think a WISHA standard to prevent MSDs would help?
- If you've had one of these problems, please describe what it meant to you.

Of the 889 who sent in surveys, 68% answered 'yes' to Question 5: "Do you think a WISHA Standard to prevent MSDs would help?" Of the remainder, 22% answered 'no' and 10% answered 'maybe' or chose not to answer.

### Key Issues Identified by L&I

Below are "key issues" drawn from the Rule Development Conferences and subsequent written comments. Many of these issues, as well as others brought up by participants and the department, will be addressed during the upcoming Advisory Committee meetings.

### Scope and Application of the Proposed Rule

- Would increased training, education and consultation programs make regulation unnecessary?
- Who will the rule apply to?
- What triggers an employer's responsibility to comply?
- How will employers know they are in compliance?
- Should the rule cover all MSDs or only a subset (e.g., limit to gradual onset only)?
- Should the rule cover all industries and job tasks, or only a subset?



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- Should work sites that are not fixed or have a largely temporary or seasonal work force be considered differently than other work sites?
- Would a rule with general requirements offering flexibility in approaches to compliance, or a rule that spells out very specific requirements be preferable? Would a combination of these two approaches be most effective?
- Should only high-risk industries and jobs be targeted, or targeted first? If this approach were used, how would "high-risk" be defined?
- What specific elements should the rule require (e.g. training, assessment, controls, medical management, evaluation)?

## Ensuring a Fair and Feasible Proposal

- How can the rule language be written to make it clear and simple enough for all to understand and use?
- How will L&I's claims data be used?
- Will employers be allowed time to get educated about MSD problems and their solutions?
- How can the rule be made flexible or specific enough to be effective for a wide variety of industries?
- What will be the employee's specific responsibilities (Vs the employer)?
- What happens if compliance is not technically feasible or affordable?
- How will MSDs (or risks) not associated with work be evaluated or considered?
- Can we affect how materials and tools are designed and manufactured, and the way that supplies are provided to lessen injuries and illnesses to end users? Can we affect the way that buildings are engineered to lessen risk to occupants?
- How will employee involvement be assured?
- How will employers with existing ergonomics programs be affected?
- How will employers with no history of MSDs be affected?
- How will the effectiveness of the rule be evaluated?

## Reducing Regulatory Burden

- Will technical assistance be readily available?
- Will the rule be phased in to allow employers/employees time to comply (before citations will be issued)?
- Can incentives be offered to employers to help them comply?
- Will "best practice guidelines" be available for employers?
- Will small business be given special considerations?
- Can penalties be avoided for first time citations?
- How will paperwork burdens be avoided?



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- Can a network be established to share the success of controls between employers?
- What are the costs/benefits of reducing MSDs?

### Other Regulatory Approaches to Examine

- WA Dept. of Ecology's pollution prevention approach
- WA Dept. of Health's approaches to regulating tobacco sales and food safety
- Pilot rule making to test effectiveness of approaches
- "Sunset" clause to eliminate regulations if not shown effective
- British Columbia regulation
- Cal-OSHA regulation
- Past OSHA-proposed regulation (and any future proposal)
- Regulations from other countries
- Interactions with the Americans with Disabilities Act (ADA)
- Use or expansion of existing WISHA rules (e.g., Safeplace, Accident Prevention Programs)
- Modify Industrial Insurance premiums to increase costs to employers with high rates of MSDs, reward those with lower rates

### The Next Step: Assembling an Advisory Committee

The Department plans to begin work with a Rule Development Advisory Committee in late February, 1999. We are now searching for nominees to participate on an Advisory Committee regarding rule making on the Prevention of Work-related MSDs. Please see the statement of interest if you would like to be considered (or suggest someone) for membership on the Advisory Committee.